

Finance Norway welcomes the consultation on the use of alternative dispute resolution (ADR) as a means to resolve disputes related to commercial transactions and practices in Europe. Indeed, alternative dispute resolution schemes constitute an efficient way to resolve disputes. They are preferable to judicial proceedings and should therefore be promoted and developed, notably by increasing their visibility and the information to consumers.

Different ADR schemes already exist in Europe and are considered to be efficient. Consequently, if it is decided to adopt an initiative at European level, Finance Norway believes that it should not take the form of a mandatory initiative but rather of a recommendation to member states.

1. What are the most efficient ways to raise the awareness of national consumers and consumers from other Member States about ADR schemes?

As far as the banking sector is concerned, Finance Norway believes that the obligation to inform the consumers is already in place in community legislation, e.g. through the Payment Services directive and the Consumer Credit directive. According to those directives, the payment service providers/lenders have to inform their customers in the contracts about out-of-court procedures.

Finance Norway also believes that information campaigns run by National authorities in cooperation with consumer organizations may be an effective way to increase consumer awareness about ADRs.

2. What should be the role of the European Consumer Centres Network, national authorities (including regulators) and NGOs in raising consumer and business awareness of ADR?

European Consumer Centres, State authorities and NGOs could indeed take further actions to raise awareness about ADR mechanisms. They could have information on ADR schemes on their website or give such information on request.

3. Should businesses be required to inform consumers when they are part of an ADR scheme? If so, what would be the most efficient ways?

Specific information in contracts is already foreseen by community legislation, i.a. for the banking sector. Such information is in most of the cases available for the customer in the point of sale and on the businesses' websites.

4. How should ADR schemes inform their users about their main features?

Taking into account the experience of our members, there are many ways of informing about ADR system.

Firstly, general information can easily be found on the website of trade federations (such as domestic banking federations). Secondly, the businesses inform their clients in their branches, or when signing contract, as requested now by most sectoral legislations. Finally we believe that information should also be available through authorities and consumer organizations.

5. What means could be effective in persuading consumers and traders to use ADR for individual or multiple claims and to comply with ADR decisions?

The most effective way to persuade consumers and traders to use ADR schemes is to keep it a cheaper, simpler and faster procedure than court case, and to ensure that the ADR scheme has a good standing, with highly qualified members and decisions which are respected.

Concerning multiple claims see our answer to question 12.

6. Should adherence by the industry to an ADR scheme be made mandatory? If so, under what conditions? In which sectors?

Finance Norway believes that making adherence to an ADR scheme mandatory, may be a good idea. In Norway, legislation on this is currently being prepared for the financial sector.

7. Should an attempt to resolve a dispute via individual or collective ADR be a mandatory first step before going to court? If so, under what conditions? In which sectors?

No, it should always be possible to go directly to court, if the parties prefer to do so; If the parties have decided that they would like to have a court decision in a particular matter, it is pointless to have to go through an ADR-scheme first. This would only constitute an extension of the judicial civil procedure, which is already the subject of criticism because of its length and bureaucracy.

8. Should ADR decisions be binding on the trader? On both parties? If so, under what conditions? In which sectors?

Although there are ADR schemes, where it is the case, we believe that generalizing it would not be acceptable. In many members states indeed ADR decisions are not binding and only decisions made by court are binding. It would therefore be a fundamental change in those countries which could put at risk the use of ADR schemes. There are indeed fundamental differences between ADR and court proceedings: a court procedure allows for instance examination of witness and presentation of further evidence.

9. What are the most efficient ways of improving consumer ADR coverage? Would it be feasible to run an ADR scheme which is open for consumer disputes as well as for disputes of SMEs?

Disputes of SMEs will typically be more complicated and involve higher amounts than consumer cases. They will not be suitable for the ADR fast track procedures.

10. How could ADR coverage for e-commerce transactions be improved? Do you think that a centralised ADR scheme for cross-border e-commerce transactions would help consumers to resolve disputes and obtain compensation?

Firstly, it should be further assessed whether e-commerce transactions would need to be treated differently and separately (regardless of the sector). Existing ADR in the banking sector also include claims related to e-banking services, without recording any further difficulties that would justify a separate treatment.

11. Do you think that the existence of a "single entry point" or "umbrella organisations" could improve consumers' ' access to ADR? Should their role be limited to providing information or should they also deal with disputes when no specific ADR scheme exists?

Finance Norway does not see a need for a "single point of entry". Consumers, notably through internet, do not have difficulties in finding the relevant ADR scheme. We believe that the existence of a single point of entry just will take more time and involve more costs. It might be perceived at the end by consumers as less user-friendly as it would add in bureaucracy and further delays.

12. Which particular features should ADR schemes include to deal with collective claims?

As a general comment, Finance Norway believes that ADR schemes are not the most suited for collective claims. Indeed they are generally too long, complex and expensive for this kind of fast track procedures, as the resources of most ADR schemes are limited.

13. What are the most efficient ways to improve the resolution of cross-border disputes via ADR? Are there any particular forms of ADR that are more suitable for cross-border disputes?

FIN-NET network was originally established with the intention of extra-judicial settlement of disputes regarding cross border financial services within the European Union, bringing together all relevant ADR institutions dissolving disputes between businesses and their customers in the financial services sector. For effective and efficient settlement of cross-border disputes, we believe that it may be useful to create similar networks like the FIN-NET in other sectors.

14. What is the most efficient way to fund an ADR scheme?

We believe that the ADR scheme should be funded by the industry.

15. How best to maintain independence, when the ADR scheme is totally or partially funded by the industry?

The source of funding should not be considered determinant to guarantee the partiality or impartiality of the decisions within ADR schemes. Financing ADR schemes by the industry should not jeopardize the objectivity and independence of the mediators.

In Norway, the complaint boards within the financial sector consist of an equal number of members from the industry and the consumer side. The leader of the complaint board is a highly qualified independent person who has the qualifications of a judge in the Supreme Court. Finance Norway believes that this is a structure which ensures independence well.

16. What should be the cost of ADR for consumers?

This question requires further analysis. The important thing is that costs should not - in any way - be an obstacle to access ADR schemes. Whether a small symbolic fee is charged to avoid abusive claims, appears, in our opinion, to be legitimate.